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Chron

SECOM-D-300
7 December 1977

MEMORANDUM FOR: Executive Officer, ICS

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FROM:

[REDACTED]
Acting Chairman, Security Committee

SUBJECT: Comments on S. 1845 (U)

(U) The following comments are made per your request of 6 December 1977:

a. (C) As drafted, the bill seems adverse to the legitimate interests of the DCI and the CIA. The bill would make it an offense (misdemeanor) for any officer or employee of the United States, or for any person acting for and on behalf of the United States, except officers or employees of CIA and NSA, to require or request an employee or applicant to take a polygraph test in connection with services, duties, employment, or application for employment. The bill would also subject to civil suit in a personal capacity any officer or employee of the United States who requires or requests such polygraph test. Further, such suit could be prosecuted by an employee union on behalf of an aggrieved employee. The same criminal and civil liabilities would apply to private persons engaged in a business or activity affecting interstate commerce.

b. (C) The bill's exception for CIA and NSA are inadequate to satisfy basic security requirements. Since the exception would apparently apply only to regular employees or applicants for such status, it would seem that polygraph tests could not be requested of the following classes of persons.

- (1) Contract employees
- (2) Detailees

- [REDACTED]
- (4) Employees of proprietary organizations
 - (5) Foreign national employees

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c. (C) The application of the bill to private business would appear to preclude use of the polygraph in connection with security screening (whether for employment or associated with the investigation of a security compromise) of employees of firms holding classified contracts with an Intelligence Community agency.

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d. (C) The language of the bill would also prohibit any Intelligence Community agencies other than CIA and NSA from using the polygraph in other than law enforcement situations--and, even there, the bill would cloud agency authority for such use. A readily identifiable problem in this regard would be inability under this bill to require or request personnel of agencies other than CIA and NSA to take a polygraph test in connection with investigation of a serious security compromise. Since the Espionage Laws do not effectively reach security leaks as such, investigation of them does not necessarily constitute law enforcement, and a Government officer or employee who requests a polygraph test in connection therewith would subject himself to fine, imprisonment, and civil liability without dollar limit.

e. (C) While the proposed bill could possibly be amended to exclude necessary CIA and Intelligence Community security requirements, the rationale which would be needed to support requested amendments might itself expose a number of sensitive agency activities. It might be helpful in this regard to discuss the potential impact of this bill with the Senate Select Committee on Intelligence.



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